

LSPA Newsletter Columns - 2004

Audit Update for January, February, and March 2004

Level II Audits for January, February, and March 2004:

DEP completed Level II audits and issued Notices of Audit Findings (NOAFs) at 51 sites between January and March 2004. Eleven Notices of Noncompliance (NONs) were issued, together with DEP's findings. Level II audits of interest in January, February, and March 2004 include:

1. Following a LII audit of a groundwater extraction and treatment system, DEP issued a Notice of Audit Finding (NOAF) with an Interim Deadline for failure to operate or maintain remedial wastewater treatment works in a manner that is protective of health, safety, public welfare, and the environment. It was noted during the inspection that the control system did not include shutoffs in case of a loss of system integrity. DEP required installation of a containment system and liquid sensor, which is connected to an emergency shutoff switch to prevent a significant release of untreated water, or justification as to why this would not be necessary. (Newburyport, RTN 3-12652, January 6, 2004)
2. Following a LII audit of an IRA that included application of absorbent materials, installation of an oil water separator, soil excavation, and underground storage tank (UST) removal and assessment, DEP issued a NOAF/NON for failure to conduct the proposed IRA assessment activities, and failure to remove Remediation Waste managed under the Bill of Lading process within 120 days of initial excavation. It was noted during the site inspection that proposed sampling to assess the impacts, if any, that the subsurface release had on indoor air quality, was not performed. In addition, approximately three cubic yards of petroleum impacted soil were excavated and then stored at the site but were not removed until 311 days after initial excavation. DEP required completion of the indoor air monitoring survey as specified in the IRA Plan. No further action was required for the Remediation Waste removal violation; however, the violation may be included to establish a pattern of noncompliance if future enforcement actions are pursued. (Gardner, RTN 2-0014197, NON-CE-04-3025, February 18, 2004)

Level III Audits for January, February, and March 2004:

DEP completed Level III audits and issued NOAFs at 37 sites between January and March 2004. Twenty-six NONs were issued with DEP's findings. Level III audits of interest in January, February, and March 2004 include:

1. A release of petroleum from USTs occurred at a municipal facility located in a rural area. The release included the presence of 7.3 inches of non-aqueous phase liquid (NAPL). A potable drinking water well services the facility. IRA activities were conducted at the disposal site including NAPL recovery, UST removals, soil excavation and disposal. In addition, assessment activities included soil boring and monitoring well installation, and soil, groundwater, and surface water sampling. Comprehensive Response Actions included soil excavation and

dewatering. A Class A-2 RAO Statement with a Method 1 risk characterization was submitted to DEP in July 2002. DEP issued an NOAF/NON requiring retraction of the RAO and submittal of a Tier II Extension Request to conduct further response actions. Through its audit, DEP identified a failure to continually assess for an IRA based on potential impacts to a private water supply located within 70 feet of the release area (well was sampled one time); failure to calculate a conservative Exposure Point Concentration (EPC) since selected groundwater sampling results exceeding the applicable GW-1 standards were eliminated from the calculations, and failure to define the horizontal extent of the release in a downgradient location. (Barre, RTN 2-001014, NON-CE-04-3006, February 2, 2004)

2. A historical release of polychlorinated biphenyls (PCBs) in soil at a commercial property was reported to DEP in September 1996. Following initial and comprehensive response actions, a Class B-1 partial RAO (RAO-P) was received for a portion of the disposal site that exists on an adjacent "off-property upland area". A subsequent Class A-3 RAO with an Activity & Use Limitation was filed for the property and adjacent "off-property upland area". DEP issued an NOAF/NON, concluding that the RAO submittals were in non-compliance with MCP requirements and therefore invalid, and that additional response actions were required due to a failure to adequately address the source and extent of contamination that was identified. DEP found that no soil samples were collected from the "off-property upland area", the area of interest in the Class B-1 RAO-P. Soil samples were collected only from the boundary of the adjacent property. The analytical results of these soil samples were used to estimate concentrations in the "off-property upland area". The RAO-P indicated that access to the "off-property upland area" had been requested and denied. DEP required submittal of a Tier Classification Extension in order to conduct additional response actions, as well as following the procedures for Site Access Authorization at 310 CMR 40.0173. (Canton, 3-14255, NON-NE-04-3A070, March 24, 2004)

Audit Update for April, May, and June 2004

Level II Audits for April, May, and June 2004:

DEP completed Level II audits and issued Notices of Audit Findings (NOAFs) at 53 sites between April and June 2004. Eight Notices of Noncompliance (NONs) were issued, together with DEP's findings. Level II audits of interest in April, May, and June 2004 include:

1. Following a LII audit of a remedial system consisting of molasses-enhanced reduction of hexavalent chromium, DEP issued a Notice of Audit Findings (NOAF)/Notice of Noncompliance (NON) for failure to develop an Operation, Maintenance, and Monitoring (OMM) Plan, failure to submit timely OMM Status Reports, failure to keep maintenance and inspection log books, failure to submit an Immediate Response Action (IRA) Completion Statement, and failure to include a description and conceptual plan, including flow diagrams of the remedial system. The system was operational during the inspection. Within 90 days, DEP required submission of a revised OMM Plan that includes process and instrumentation diagrams, as appropriate, a current Phase V Status Report, an IRA Completion Report, and a confirmation of Log Book use. (Orange, RTN 1-00949, May 7, 2004)
2. Following a LII audit of site conditions related to an area subject to an Activity & Use Limitation (AUL), DEP issued a NOAF that did not identify any violations of the requirements applicable to the AUL. The inspection was focused on compliance with the AUL obligation and maintenance conditions. This site had previously been audited; DEP conducts reinspections of AUL sites to ensure compliance with the AUL obligation and maintenance conditions. (Attleboro, RTN 4-00228, May 12, 2004)
3. Following a LII audit of a dual phase (air/water) extraction and treatment system, DEP issued a NOAF with an Interim Deadline citing failure to achieve a 95% reduction of Volatile Organic Compound (VOC) emissions, and failure to post the name and telephone number of a person to contact in case of a malfunction. The system was operational during the inspection. Inspection measurements with a photoionization detector (PID) indicated influent concentrations of 38.2 parts per million (ppmv) and effluent concentrations of 3.6 ppmv. DEP required the collection and submission of influent and effluent vapor samples for laboratory analysis due to a possible inaccuracy with the PID readings. In addition, it required contact information to be posted on the outside of the building housing the remedial system. (Lexington, RTN 3-1213, May 24, 2004)

Level III Audits for April, May, and June 2004:

DEP completed Level III audits and issued NOAFs at 35 sites between April and June 2004. Twenty-seven NONs were issued with DEP's findings. Level III audits of interest in April, May, and June 2004 include:

1. A historical release of chlorinated compounds and metals was detected on an industrial property with a manufacturing history in May 2002 and reported to DEP in August 2002. Assessments and evaluations of the condition of the property were conducted and a Class B-1 Response Action Outcome (RAO) Statement was submitted to DEP in August 2003. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore it is invalid. Additional response actions were required due to a failure to achieve a level of No Significant Risk (NSR), failure to identify exposure points consistent with the type and method of Risk Characterization performed, failure to meet performance standards for an RAO, and failure to provide the required Phase I information or technical justification for not doing so. DEP noted that identified exposure point concentrations (EPCs) for cyanide and nickel detected in groundwater samples from two monitoring wells exceeded the applicable Method 1, GW-3 standards. In addition, insufficient information and detail were provided regarding the nature and extent of chlorinated volatile organic (CVOC) contamination in soil and groundwater throughout the site. Specifically, soil and groundwater samples were not analyzed for CVOCs, despite the site's manufacturing history, and the historical presence of chlorinated solvents in an on-site industrial well. DEP established Interim Deadlines for the submittal of a Tier Classification, and if necessary, a Tier I Permit application to conduct further response actions at the site. Unless a Downgradient Property Status (DPS) Submittal or RAO Statement is submitted required comprehensive response actions must also be performed. (Woburn, RTN 3-22058, NON-NE-04-3A071, April 7, 2004)
2. A Notice of Responsibility (NOR) was issued to a Potentially Responsible Party (PRP) of a gasoline and retail sales property in May 1996, as a result of a Downgradient Property Status submittal by the owner of a neighboring property. According to available information from the downgradient property, three former gasoline USTs are the potential source of contamination to the downgradient property from the upgradient site. Between June 1996 and March 1997 assessment of the site was conducted inclusive of soil and groundwater sampling and analysis. A Phase I report was submitted in August 1996, and a Class B-1 RAO with a Method 1 Risk Characterization was submitted in May 1997. In 2001, DEP conducted an audit of the Class B-1 RAO, and issued a NOAF/NON requiring additional assessment at the upgradient site. A Post-Audit Completion Statement (PACS) was submitted on September 2001 with additional assessment work, consisting of a magnetometer survey, test pit excavation, and soil and groundwater sampling (two rounds). A review of the 2001 documentation by DEP concluded that the LSP Opinion, stating that a condition of NSR exists or has been achieved at the site, was not supported, based on exceedances of GW-2 and GW-3 standards. In a letter dated October 18, 2001, DEP deemed the 1997 RAO not to be valid, and required a Tier Classification submittal. The site was classified as Tier II on October 26, 2001. A second revised Class B-1 RAO Statement was submitted to DEP in September 2002. DEP issued an NOAF/NON concluding that the second revised RAO submittal was in non-compliance with MCP requirements and therefore invalid, and that additional response actions

were required. DEP noted a failure to support the RAO with assessments and evaluations of sufficient scope, detail, and level of effort to characterize risk posed by the site; failure to achieve a level of NSR due to EPCs exceeding applicable Method 1 standards; failure to calculate EPCs correctly; failure to identify all human receptors for likely exposure; and failure to use an appropriate method of risk characterization. Through its audit, DEP noted that assessment of the soil in the former location of the USTs had not been conducted, and could be a continuing source of contamination; noted that GW-2 standards were exceeded within 30 feet of the downgradient building and no further evaluation was conducted for this condition; noted that the 75% criterion for data points used in the EPC calculations was not met; and noted that the risk characterization did not identify occupants of the downgradient building as potential receptors. Within 60 days, DEP required submittal of a Post-Audit Completion Statement (PACS) accompanied by a schedule for submitting: A Phase II Report containing documentation of additional assessment, a revised risk characterization and, if applicable, a Phase III Report; and an RAO that meets the requirements of the MCP. (North Adams, 1-11332, NON-WE-04-3A148, April 28, 2004)

3. A historical release of chlorinated compounds was detected on a retail shopping plaza property near a commercial space formerly occupied by a dry cleaning facility. The release was identified in November 2002 and reported to DEP in March 2003. Soil excavation was conducted as a Release Abatement Measure (RAM). Two monitoring wells destroyed during the RAM excavation were not replaced so they could not be re-sampled. One sub-slab soil gas sample was obtained upgradient of the impacted area. The data from this sample were used as the basis of a Method 2 Risk Characterization, which concluded that GW-2 groundwater standards are not applicable to the site. Data from two rounds of groundwater sampling conducted less than a month prior to the RAO submittal revealed concentrations of vinyl chloride above the GW-2 Standard, and cis-1,2-dichloroethene above the Upper Concentration Limit. A Class A-2 Response Action Outcome (RAO) Statement was submitted to DEP in August 2003. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore invalid, and that additional response actions were required. DEP determined that the documentation does not support a conclusion of NSR to human and/or environmental receptors. The risk characterization used to support the determination of NSR did not meet the requirements for Method 2. The conclusion that GW-2 standards do not apply to the site is not supported; therefore, a condition of NSR does not exist based on the data provided. In addition, there was inadequate assessment of groundwater and soil gas, and analytical data were reported with detection limits above the applicable GW-2 standards. Within 60-days, DEP required submission of a PACS with either a Tier Classification Submittal, and if applicable, a Tier I Permit application package to continue response actions, or a Tier Classification Submittal, and a revised RAO that meets the requirements of the MCP, including documentation of additional assessment and a revised risk characterization. (Hadley, 1-14754, NON-WE-04-3A057, May 25, 2004)

4. A release of gasoline-related compounds was detected at a gasoline sales and service station in 1990. The site was listed as an Unclassified Confirmed disposal site in 1990 and was transitioned for further action as a Tier II site in April 1996. Short Term Measures were conducted. A Class A-2 Response Action Outcome (RAO) Statement was submitted to DEP in December 1998. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore invalid, and that additional response actions were required. DEP noted a failure to identify the applicable groundwater category and failure to achieve a level of NSR. Information provided by the local Board of Health indicated the presence of measurable levels of methyl tertiary butyl ether (MTBE) in a private drinking water well located within 250 feet of the site. The RAO indicated that the GW-1 groundwater classification did not apply since the site is not in a current or potential source of drinking water. However, two private wells are located within 250 feet of the site and therefore cleanup to GW-1 standards would apply. There is no indication in available files that either of these drinking water wells was sampled for the presence of contamination. DEP also determined that a Condition of Substantial Release Migration (SRM) and a Critical Exposure Pathway (CEP) exists at the site due to the presence of the private drinking water supply. Within 14-days, DEP required communication of an intention to conduct an IRA to address the SRM and CEP and a schedule for the implementation of the IRA. Within 60-days, DEP required submittal of a Tier I Permit. Within one-year, DEP required submittal of a Phase II Comprehensive Site Assessment Report, and, if applicable, a Phase III Remedial Action Plan. (Tewksbury, 3-2967 & 3-23841, NON-NE-04-3A148, June 7, 2004)

Helpful Hint

In June 2004, BWSC enhanced its popular "List of Sites" web page to include a separate file of Activity and Use Limitations (AULs). The file provides an alphabetized list, by City/Town, of properties in Massachusetts where an "Activity and Use Limitation" (AUL) has been recorded or registered. The complete AUL is recorded or registered at the County Registry of Deeds office for the respective City/Town. The web file includes a hyper link to the respective registry of deeds office, where some Notices can be found online. In addition, a copy of the AUL is available in Massachusetts Department of Environmental Protection (DEP) files and in some City/Town Offices where the AUL is located. Please see [the AUL List](#) for more information.

Level II Audits for July, August, and September 2004:

DEP completed Level II audits and issued Notices of Audit Findings (NOAFs) at 60 sites between July and September 2004. Thirty Notices of Noncompliance (NONs) were issued, together with DEP's findings. Level II audits of interest in July, August, and September 2004 include:

1. Following a LII audit of a Remedy Operation Status (ROS) consisting of landfarming and groundwater treatment with Oxygen Releasing Compounds (ORCs), DEP issued a Notice of Audit Findings (NOAF)/Notice of Noncompliance (NON) for failure to monitor the application of Remedial Additives, failure to meet Phase II (PHII) requirements, failure to continually assess and evaluate for a Immediate Response Action (IRA) condition, failure to properly manage Remediation Waste, failure to meet environmental sample collection & analysis requirements, and failure to meet Response Action Performance standards. DEP noted that groundwater monitoring was not completed at regular intervals of three months to detect any migration of oil and/or hazardous material, Remedial Additives and/or Remedial Additive By-products; and that a private potable water supply well at the abutting property was not identified as a potential receptor of groundwater contamination and had not been periodically sampled to continually assess and evaluate for a condition requiring an IRA. After groundwater pump and treat technologies failed to remove Non-Aqueous Phase Liquid (NAPL) from the subsurface environment in the source area, a pproximately 105 cubic yards of fuel oil-saturated soils were excavated and arrayed in uncovered landfarm cells. Remedy Operation Status Submittals did not: present a mass flux analysis or identify distances to potential receptors. Landfarming of soil stockpiles is prohibited unless appropriate steps have been taken to minimize and treat potential air emissions per 310 CMR 40.0036(6). Within a specified deadline, DEP required submission of a Remedy Operation Status (ROS) submittal addressing the violations identified. (Winchendon, RTN 2-0000419, NON-CE-04-3066, July 27, 2004)
2. Following a LII audit of a groundwater recovery and treatment system located in a residential basement sump, DEP issued a NOAF that did not identify any violations within the scope of the audit. The system consists of a groundwater recovery point located within a basement sump that is pumped to two 250-pound liquid-phase activated carbon canisters connected in series. The system was operational during the inspection. Jar headspace measurements of water were conducted during the inspection with a photoionization detector (PID), which indicated influent and effluent concentrations of Non-detect (N.D.). No further actions were requested by DEP. (Newbury, RTN 3-23343, August 19, 2004)
3. Following a LII audit of a groundwater extraction and treatment system, and drinking water treatment system, DEP issued a NOAF/NON for failure to take measures to adequately protect the treatment system from vandalism, system failure, and other events likely to result in a discharge of oil and/or hazardous

materials to the environment, failure to engage or employ a Wastewater Treatment Plant Operator, failure to document engineering concepts and design criteria to be used to design and construct the Comprehensive Response Action in the Remedy Implementation Plan (RIP), failure to include a description of the type and frequency of inspection and/or monitoring (I&M) activities in the inspection and monitoring reports, and failure to submit timely post-operation, maintenance, and monitoring (OMM) reports. Within a specified deadline, DEP required submittal of a RIP and OMM report that corrects the violations identified. (Brimfield, RTN 1-00319, NON-WE-04-3A125, September 14, 2004)

Level III Audits for July, August, and September 2004:

DEP completed Level III audits and issued NOAFs at 34 sites between July and September 2004. Twenty-five NONs were issued with DEP's findings. Level III audits of interest in July, August, and September 2004 include:

1. A historical release of petroleum was detected at a railroad yard property in June 1999. Assessments and evaluations of the condition of the property were conducted and a Class B-1 Response Action Outcome (RAO) Statement was submitted to DEP in April 2004. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore invalid. Additional response actions were required due to a failure to implement an Activity & Use Limitation (AUL) where limitation or restrictions in use are required to maintain a level of no significant risk. In accordance with the MCP, a rail right-of-way means land or interests in lands, which are in use as rights-of-way for rail purposes. This definition does not include related facilities, such as rail yards. DEP required submittal of a Class B-2 RAO with an AUL or remediation of the property to a level of no significant risk for unrestricted use and a new RAO submittal. (Lowell, RTN 3-18305, NON-NE-04-3A194, July 15, 2004).
2. In March 1992, DEP issued a Notice of Responsibility (NOR) to a Potentially Responsible Party (PRP) of a vacant and unimproved site where NAPL was observed in two monitoring wells. A review of the historical information available indicated a gasoline filling station existed at the site between 1920 and 1970, and the monitoring wells that contained NAPL were located in the area of the former underground storage tanks. In July 1994, a NAPL recovery system was installed and operated through June 1995. Approximately 738 gallons of product were removed. NAPL was observed in 4 of 10 monitoring wells at the site on March 25, 1996 at thicknesses of up to 0.63 feet. Between April and May 1996, 1,886 tons of petroleum-contaminated soil were removed from the site as a Release Abatement Measure. Five monitoring wells were installed to replace those removed/destroyed during soil excavation activities. A Class A-2 RAO was submitted to DEP in May 1997. In July 2003, DEP received a Phase II report, Phase III report, Class C RAO, and Downgradient Property Status (DPS) Submittal from the site downgradient of the former gasoline filling station. In August 2004, DEP received a monitoring report from this downgradient property indicating the presence of NAPL in 6 of 14 monitoring wells at thicknesses up to

- 2.73 feet. DEP issued an NOAF/NON concluding that the RAO submittal for the former gasoline filling station site was in non-compliance with MCP requirements and therefore invalid. Additional response actions were required due to a failure to conduct response actions that are of sufficient scope, detail, and level of effort to define the extent of contamination, and to demonstrate a level of no significant risk has been achieved. Specifically, DEP determined that the detection of contamination at the downgradient property described in the DPS Submittal is consistent with the release at the upgradient site. Within a specified deadline, DEP required submittal of a Tier Classification package, and an IRA Plan. (Taunton, 4-1153, NON-SE-04-3A016, August 31, 2004)
3. In July 2003, DEP was notified of a release of No. 2 fuel oil from an aboveground storage tank (AST), located in the basement of a residence. Approximately 42.32 tons of petroleum-contaminated soil were excavated and removed from the site as an IRA; approximately 2,866 gallons of fuel oil-contaminated water was removed and disposed off site. Soil borings and monitoring wells were also installed to sample soil and groundwater at the site. In March 2004, a Class A-2 RAO with a Method 1 Risk Characterization was submitted to DEP. DEP issued an NOAF/NON concluding that the RAO submittal from the subject site was in non-compliance with MCP requirements and therefore invalid. Additional response actions were required due to a failure to identify Exposure Points or properly determine Exposure Point Concentrations (EPCs), failure to determine the extent of contamination at the site, and failure to meet environmental sample collection and analysis requirements. DEP found soil sample results exceeding applicable Method 1 standards, failure to correctly calculate an EPC, and laboratory analytical reports for several samples indicating that performance standards for required quality control parameters were not achieved. For example, five soil samples did not meet surrogate recovery limits and no discussion of data quality and usability was provided to verify that the data was suitable for use in the risk assessment. Within 90 days, DEP required submittal of a revised RAO that meets the requirements of the MCP, or submittal of a Tier Classification package to continue response actions. (Worcester, 2-14864, NON-CE-04-3111, September 16, 2004)

Helpful Hints

A. Activity and Use Limitation (AUL): When filing an AUL, remember the following:

- Form BWSC-113A (the last two pages only) must be attached as an exhibit to the AUL document to be recorded and/or registered with the Registry of Deeds and/or Land Registration Office, as noted at the bottom of Box B of the form.
- If documentation of signatory authority is required, that documentation also must be attached as an exhibit to the AUL and recorded/registered. If there is a previously recorded authority document, include a copy of that document.
- In order to show the relationship of the AUL Area to the disposal site boundaries, both boundaries must be clearly labeled on Exhibit B.
- An LSP Stamp is required on the signature page of Form 1075, the Opinion in Exhibit C, and Form BWSC-113A.

- Copies of plans obtained from the Registry, bearing Registry information, Plan Book #, Plan Book page, date recorded, etc. and /or Land Court Plan # of all plans referenced in the AUL must be provided to DEP within 30 days of recording the AUL.
- A time-stamped copy of the AUL may be used to document that the AUL was presented for recording at the Registry of Deeds to meet the requirement of 310 CMR 40.1056. However, a Registry-certified copy of the entire document bearing the registrar's stamp on the last page must be provided to meet the requirements of 310 CMR 40.1074.

In addition, note that the certification of ownership required in the regulations has been incorporated into the current version of Form 113, in Box G. Do not forget to include all supporting documentation (copies of notification, waivers).

B. Bwsc.regulation: LSPs should remember to use the bwsc.regulation@state.ma.us e-mail address to request "official" determinations on MCP interpretation issues.

Level II Audits for October, November, and December 2004:

DEP completed Level II audits and issued Notices of Audit Findings (NOAFs) at 64 sites between October and December 2004. Twenty-two Notice of Noncompliances (NONs) were issued, together with DEP's findings. Level II audits of interest in October, November, and December 2004 include:

1. Following an LII audit of a groundwater recovery and treatment system and non-aqueous phase liquid (NAPL) collection system located at a bulk oil storage facility, DEP issued a NOAF/NON for failure to engage or employ a Wastewater Treatment Plant Operator to ensure the proper operation and maintenance of the treatment works. During its inspection, DEP noted there was no indication that a certified Wastewater Treatment Plant Operator inspected the groundwater treatment works at the required intervals. Recent correspondence with the Licensed Site Professional (LSP) shows that the certified Wastewater Treatment Plant Operator visited the treatment system upon startup and the project foreman maintained the system thereafter. At a minimum, the Wastewater Treatment Plant Operator must inspect the groundwater treatment system at regular intervals of three months, or at a 30-day interval following any system modification. Such visits shall be entered into the field logbook and documented in each subsequent response action submittal. Within a specified deadline, DEP required inspections by a Wastewater Treatment Plant Operator at regular intervals to be reported in an upcoming monitoring report. (Pittsfield, RTN 1-11261, NON-WE-04-3A149, November 3, 2004)
2. Following an LII audit of a groundwater extraction and treatment system with NAPL recovery operating under Remedy Operation Status (ROS), DEP issued a NOAF/NON for failure to take measures to adequately protect the treatment system from vandalism, system failure, and other events likely to result in a discharge of oil and/or hazardous materials to the environment; failure to properly monitor Remedial Wastewater discharges to the ground surface or subsurface and/or groundwater; and failure to submit an alternative monitoring plan for the monitoring being conducted. During its inspection, DEP noted the absence of a process and instrumentation (P&I) diagram of the treatment works and the posting of the name and telephone number of the person to contact in the event of a malfunction. DEP also noted that recovered groundwater is stored and treated in a holding tank where nutrients and microbes are added. Groundwater is later discharged into a groundwater re-infiltration trench. Recovered NAPL is stored in a properly labeled and secured 55-gallon drum. Groundwater sampling data presented in an August 2004 ROS Submittal indicates that three sampling events were conducted in 2003. The area of hydraulic containment of groundwater at the site was not sampled at regular three-month intervals for the duration of the discharge, as required. In addition, an Alternative Monitoring Plan (AMP) was not submitted to demonstrate whether applicable standards and requirements for the discharge have been met. Within a specified deadline, DEP required submittal of an ROS with an AMP or analytical results for four groundwater-sampling

events conducted in 2004. Posting of a contact sign and P&I diagram was conducted during the audit. No further action was required for these violations. (Worcester, RTN 2-0012660, NON-CE-04-3A144, November 5, 2004)

Level III Audits for October, November, and December 2004:

DEP completed Level III audits and issued NOAFs at 29 sites between October and December 2004. Twenty NONs were issued with DEP's findings. Level III audits of interest in October, November, and December 2004 include:

1. A sudden release of petroleum from an aboveground storage tank (AST) at a private residence was reported to DEP in March 2003. The site is one of three residences that are served by a shared private well. A Class A-2 Response Action Outcome (RAO) Statement was submitted to DEP in March 2004. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore invalid. Additional response actions were required due to a failure to identify potential exposure points and describe human receptors, including the persons drinking from the shared private well; failure to conduct appropriate initial site investigations in order to determine if an Immediate Response Action (IRA) is necessary; failure to measure for the presence of oil and/or hazardous materials in sediment and/or surface water and support the RAO by assessments and evaluations of sufficient scope, detail, and level of effort, including the seepage of oil into the adjacent wetland described in the RAO report; and failure to clearly and accurately delineate the boundaries of the disposal site. DEP noted that the groundwater assessment included collection of samples from the shared private water supply in April and October 2003. Detectable levels of contaminants were not present in the sample collected in April 2003. Duplicate analyses of the sample collected in October 2003 contained low concentrations of C 11 to C 22 aromatic hydrocarbons, below the applicable Method 1 standard. Information regarding the construction of the well and how samples were collected from the well were not provided in the RAO report, and no subsequent analytical data from the water supply was presented in the report. DEP required submittal of a revised RAO or Tier Classification of the site to conduct additional response actions. (Palmer, RTN 1-14784, NON-WE-04-3A135, October 1, 2004).
2. In July 2002, DEP completed an audit and issued a NOAF/NON for a Class A-3 RAO Statement received in March 2000, which identified a number of violations of the Massachusetts Contingency Plan (MCP). At that time, DEP required retraction of the RAO, termination of the AUL, and submittal of a Tier II Extension to conduct further response actions to address NAPL present at the site. In August 2003 and January 2004, DEP received a Release Abatement Measure (RAM) Plan and its RAM Status Report, respectively. The RAM Plan and Status Report were prepared on behalf of the current owner of the property. The RAM plan consisted of chemical oxidation of petroleum product through the use of hydrogen peroxide as the Remedial Additive. As of November 2004, DEP did not receive any additional RAM status reports or a RAM completion report and none of the violations listed in the July 2002 NON/NOAF were addressed including the

requirement to retract the RAO. DEP noted that the RAM plan was implemented but it did not effectively address the NAPL at the site. DEP also noted that since the submittal of the Class A-3 RAO, the property ownership has changed but the Department did not receive a Tier II Transfer Submittal to reflect the change of the entity undertaking response actions at the site. Therefore, DEP issued an NOAF/NON to the new owner concluding that the RAO submittal was in non-compliance with MCP requirements and therefore invalid. DEP required submittal of a Tier II Transfer and Tier II Extension to conduct additional response actions at the site as well as a revised Phase II report, and termination of the AUL. (Dedham/Boston, RTN 3-12541, NON-NE-02-3A077, November 15, 2004).

3. In September 2004, DEP was notified of a sudden release of approximately 30-40 gallons of diesel fuel from the saddle tanks of a dump trailer as a result of a motor vehicle accident. The diesel fuel was released to the asphalt roadway and a limited area of soil adjacent to the roadway. Absorbents were applied to the impacted pavement, and an area of soil measuring 4' x 1' x 0.5' was excavated and disposed of. A composite soil sample was collected from the base of the excavation and screened with a photoionization detector (PID), yielding a result of Not Detected (ND). In October 2004, DEP received a Class A-1 RAO. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore invalid. DEP noted that laboratory analytical data was not collected for the Class A-1 Response Action Outcome Statement to demonstrate a reduction to background conditions (and therefore no significant risk). The RAO also failed to define local background conditions. DEP required submittal of a revised RAO that addresses the violations. (Brockton, RTN 4-18682, NON-SE-04-3E019, December 8, 2004).
4. In 1993, three gasoline Underground Storage Tanks (USTs) were removed from a commercial property and contaminated soil was excavated and stockpiled. Limited soil and groundwater contamination remained in the tank area, mostly on the western side. Four monitoring wells were installed around the tank excavation. A sheen was observed in the tank grave. Two waste oil USTs were also removed in 1993 with no evidence of a release. No further response actions were conducted at the site until 2004. In May 2004, DEP issued an NON for failure to conduct response actions. As a result of the NON, additional assessment was conducted, including soil and groundwater sampling and analysis. Low levels of Volatile Petroleum Hydrocarbons (VPH), Extractable Petroleum Hydrocarbons (EPH), and target analytes were detected. All data, with the exception of lead in soil, were below the Method 1 Cleanup Standards. The RAO report stated that all gasoline-impacted soils excavated during the initial response actions (1993) were removed and transported off-site to a recycling facility. The LSP-of-Record indicated that information was limited, and the dates of transport and the facility used for the disposal of the contaminated soil were not known. Verification of off-site disposal was not provided in the RAO. Information available to DEP indicates the soil may have been re-used on the property. In September 2004, DEP received a Class A-2 RAO. DEP issued an NOAF/NON concluding that the RAO submittal was in non-compliance with MCP requirements and therefore

invalid. DEP noted that although it was reported that contaminated soil was excavated and removed from the disposal site no disposal documentation was provided as required. Also, the boundaries of the disposal site have not been adequately determined since verification of soil removal and/or documentation of the current location of the soil has not been provided in support of the RAO. DEP required several elements of documentation regarding the disposition of the soil stockpile as well as an RAO that supports a condition of No Significant Risk. (Lynn, RTN 3-4663, NON-NE-04-3A310, December 16, 2004).

Helpful Hints

AUDIT WEB PAGE UPDATES: In December 2004, the Audit Web Page was the recipient of a badly needed "extreme makeover". The freshened-up page includes the following:

- An updated Audit Program Fact Sheet, which provides a wealth of information about the current auditing program as it has evolved since 1999.
- Additional Technical Screening Audit Forms/Checklists, including those used to review Preliminary Response Actions, Comprehensive Response Actions, and Downgradient Property Status Submittals.
- A link to the new "List of Sites with Activity & Use Limitations", which was introduced by DEP earlier in 2004.

BWSC.REGULATION: LSPs should remember to use the bwsc.regulation@state.ma.us e-mail address to request "official" determinations on MCP interpretation issues.

The Agency Speaks January through March 2004

by Maria Pinaud, 617/292-5909, Maria.Pinaud@state.ma.us

This column focuses on noteworthy enforcement actions taken by DEP's Bureau of Waste Site Cleanup during January through March 2004. The statements of fact below are DEP allegations and have not necessarily been admitted to by the parties subject to enforcement.

Failure to Notify

- DEP issued a unilateral order to the owner of a property where illegal disposal of hazardous waste occurred in a GW-1 area (private wells). A unilateral penalty in the amount of \$47,400 was also assessed for the improper disposal and burying of hazardous waste, failure to notify of a release and for failure to complete response actions. DEP conducted Immediate Response Actions including the removal and disposal of the recently buried hazardous waste, which included paints, sealers, solvents and various water proofing compounds, to prevent impacts to nearby residential wells. In addition to the penalty, DEP has ordered the owner to complete the remaining cleanup activities by a set compliance deadline. UAO-WE-04-3003 and PAN-WE-04-3002
- DEP executed an agreement with a major gasoline retailer to resolve violations of the MCP including failure to notify of a time critical site condition affecting a wetland, failure to conduct Immediate Response Actions to address that condition, and failure to submit reports within the deadlines established by the Department. In response to a discovery of gasoline in soils and groundwater at the site, the company conducted cleanup work to remove contaminated soil, install, maintain and operate a groundwater treatment system to protect nearby private irrigation wells. However, a sample of surface water from a nearby wetland found that the release had impacted the wetland. Upon discovery of this information, the company should have immediately notified the DEP and conducted actions to address this condition. The company agreed to take appropriate action, complete the cleanup by September 2004 and to pay a \$20,000 penalty. ACOP-CE-04-3007
- DEP executed an agreement with a home heating oil delivery company for failure to notify of a greater than 10 gallons spill of fuel oil that occurred at a residential property. The homeowner notified DEP of the release after becoming frustrated with the pace of the cleanup being performed by the company. Following notification, the company retained an LSP and completed necessary response actions, including removal of impacted building materials and excavation of 25 cubic yards of fuel oil contaminated soil. The company agreed to pay a \$2000 penalty, develop a spill response plan and re-train employees on responding to releases of oil and other emergencies. ACOP-WE-03-3019

Enforcement from Audits

- As a result of a DEP audit of a Class A-2 Response Action Outcome (RAO), an agreement was executed with a food processing corporation for failing to properly evaluate soil contamination remaining from a 1991 gasoline UST release. Contaminated groundwater was found to be present near private water supply wells. The RAO was found to be invalid and response actions were required to continue until applicable cleanup standards are achieved. A \$4000 penalty was assessed. ACOP-WE-03-3A013
- As a result of a DEP audit inspection, an agreement was executed with the owner of a property for violations of the terms and conditions of an Activity and Use Limitation (AUL). The audit discovered that the pavement at the disposal site had not been maintained in accordance with the AUL. A \$9,375 penalty was assessed for this and other violations discovered during the audit. ACOP-SE-04-3A-004
- DEP issued a unilateral order and penalty to a contractor for failure to properly characterize and handle Remediation Waste and for failure to respond to a Request for Information. The contractor while working at a project involving a boat ramp (a known disposal site) for a public entity illegally removed approximately 600 tons of soil contaminated with hazardous materials and transported it to a recycling facility outside the state. The order requires the contractor to comply with requirements in the future and assesses a penalty of \$12,000. AP-NE-04-3R001
- DEP executed an agreement with the owner of a site for failure to comply with post audit response actions. DEP audited a Class B-2 RAO and issued a Notice of Noncompliance (NON) requiring correction of violations identified during the audit. A penalty of \$32,625 was assessed with a portion being suspended pending compliance with the agreement. ACOP-NE-04-3A001
- DEP executed an agreement with the owner of a site for failure to comply with post audit response actions. DEP audited a Class A-2 RAO and issued a NON requiring correction of violations identified during the audit. A penalty of \$30,750 was assessed with a portion being suspended pending compliance with the agreement. ACOP-NE-04-3A003

Deadline Enforcement

- DEP issued a unilateral penalty and an order to the owner of a commercial property to perform required response actions for failure to submit required Immediate Response Action status reports and to meet the one-year Tier Classification deadline at the site. A \$7,500 penalty was assessed. UAO-NE-04-3A003 and PAN-NE-04-3A003
- DEP issued a unilateral penalty and an order to the owner of a commercial property to perform required response actions for failure to meet the one-year Tier Classification deadline at the site. A \$7,000 penalty was assessed. UAO-SE-04-3T004 and SPAN-SE-04-3T004

Demand for Payment of Stipulated Penalties

- DEP issued a Demand for Payment of Suspended Penalties to the owner of a property seeking \$1,000 for failure to assess and remediate dry-cleaning solvent contaminated soils and groundwater, as agreed to in a previous agreement. The owner had agreed to complete response actions by July 1, 2003. To date, the environmental cleanup has not been completed. ACOP-WE-02-3003-SUP
- DEP issued a second Demand for Payment of Suspended Penalties to the owner of a gas station for failure to comply with a previous agreement. The agreement included a penalty of \$7000 that was suspended on the condition that the owner complied with the terms of the agreement which required submission of a Phase III or RAO by a specified schedule. The Department had previously demanded \$500 of the suspended penalty for violations of the agreement; this second demand letter is for the remaining \$6500. ACO-WE-3006-SUP2

by Maria Pinaud, 617/292-5909, Maria.Pinaud@state.ma.us

This column focuses on noteworthy enforcement actions taken by DEP's Bureau of Waste Site Cleanup between April and June 2004. The statements of fact below are DEP allegations and have not necessarily been admitted to by the parties subject to enforcement.

Failure to Notify

- DEP executed an agreement with a realty company to resolve violations of the MCP, including failure to notify of a release of gasoline to groundwater located within 500 feet of a private drinking water supply well, and for failure to conduct an Immediate Response Action. The company agreed to take appropriate action in a timely manner and to pay a \$7,000 penalty. ACOP-CE-04-3004.
- DEP issued a unilateral penalty of \$1,000 to a former employee of a heating oil delivery company. The employee caused a release of greater than 100 gallons of #2 fuel oil at a residence; he took no action to clean up the spill and failed to notify supervisor(s) at the company regarding the release. Months later, the company notified DEP after the homeowner complained about the lack of spill cleanup. Failure to immediately respond to the release resulted in additional migration of the fuel oil, threatening the private water supply well at the residence. The company entered into an agreement with DEP (ACOP-WE-04-3011) and arranged for all spill cleanup activities. In addition, the company agreed to pay a \$5,000 penalty and re-train its drivers on responding to spills. PAN-WE-04-3004.
- DEP executed an agreement with a transportation company to resolve violations of the MCP, including failure to notify DEP of a sudden release within 2 hours and failure to conduct immediate response actions to abate, mitigate, or eliminate time-critical conditions as a result of the release. Approximately seventy-five gallons of diesel fuel were released as a result of an accident on the Massachusetts Turnpike impacting the paved roadway surface, adjacent soil, and a small drainage stream that flows parallel to the roadway. DEP's contractors initiated cleanup activities to contain and remediate the release. In addition to paying a \$5,000 penalty, the company has agreed to complete the cleanup activities initiated by DEP. ACOP-CE-04-3006.
- DEP issued a unilateral penalty of \$9,375 to a petroleum transportation company for failing to notify DEP within 2 hours of a sudden release of 50 gallons of fuel oil and for failing to take any actions to clean up the spill. The fuel oil was released to paved and unpaved areas at a bulk oil terminal the company operates. Subsequently, after meeting with DEP to discuss the violations, the company agreed to enter into a consent order with DEP to resolve the violations. DEP

agreed to suspend \$1,875 of the penalty pending compliance with the terms of the agreement. The company also agreed to submit revised emergency response procedures and provide refresher training to employees on response to petroleum spills and other types of emergencies. The company ultimately completed cleanup of the spill. PAN-WE-04-3003.

Enforcement from Audits

- As a result of a DEP audit inspection, an agreement was executed with the owner of a property for violations of the terms and conditions of an Activity and Use Limitation (AUL). The audit discovered that the pavement at the disposal site had not been maintained in accordance with the AUL, although supplemental risk characterization demonstrated that a condition of No Significant Risk exists. A \$7,500 penalty was assessed for the violation. DEP agreed to suspend the entire penalty contingent on paving the AUL area to meet strict compliance with the AUL. ACOP-CE-04-3008.
- As a result of a DEP audit of a Downgradient Property Status (DPS), an agreement was executed with a realty trust for failing to comply with a Notice of Noncompliance (NON) requiring an adequate evaluation of soil contamination remaining from a 1991 gasoline UST release at the property. The agreement requires the realty trust to conduct the additional assessment and necessary response actions and to pay a \$10,000 penalty. DEP also agreed to suspend an additional \$10,000 if all terms of the agreement are met. ACOP-NE-04-3A004.

Deadline Enforcement

- DEP executed an agreement with the owners of a marina to resolve violations of the MCP, including failure to comply with a NON to correct violations relative to a release. The NON had been issued for failing to meet MCP deadlines for site assessment work, to meet Response Action Outcome Performance Standards, to conduct public involvement activities and to comply with an Interim Deadline set by DEP to address these items in a previous NON. The agreement requires additional assessment and proper closure under the MCP and payment of a \$11,500 penalty. DEP agreed to suspend an additional \$18,500 if all terms of the agreement are met. ACOP-SE-04-3A005.
- DEP executed an agreement with the owners of an auto body shop to resolve violations of the MCP, including failing to perform comprehensive assessment and cleanup actions, and for conducting excavation and construction activities in the contaminated area without prior submittal of a Release Abatement Measure plan to DEP. As a result of these violations, portions of the site may be inaccessible for conducting adequate assessment and/or remediation. The agreement requires comprehensive response actions and payment of a \$11,000 penalty. DEP agreed to suspend \$6,000 of the penalty if all terms of the agreement are met. ACOP-NE-04-3A007.

- DEP issued a unilateral penalty of \$119,000 to the owner of a commercial property where a release occurred for his failing to perform comprehensive response actions and submit multiple reports as required under the MCP, including: Phase II Report, Phase III Report, Phase IV Report, and a Response Action Outcome or Remedy Operation Status. To date, the Potentially Responsible Party has been unwilling to reach an agreement with DEP to resolve the violations. PAN-NE-04-3C001.
- DEP executed an agreement with the owners of an auto service shop to resolve violations of the MCP, including failure to complete response actions due to a gasoline release to groundwater. The agreement requires timely completion of response actions and payment of a \$10,250 penalty. DEP agreed to suspend \$7,750 of the penalty if all terms of the agreement are met. ACOP-CE-04-3002.

The Agency Speaks July through September 2004

by Maria Pinaud, 617/292-5909, Maria.Pinaud@state.ma.us

This column focuses on noteworthy enforcement actions taken by DEP's Bureau of Waste Site Cleanup between July and September 2004. The statements of fact below are DEP allegations and have not necessarily been admitted to by the parties subject to enforcement.

Failure to Notify

- DEP executed an agreement with a realty Trust for failing to notify DEP of a release of approximately 100 gallons of #2 oil that occurred while fuel was being transferred from a 6,000-gallon aboveground storage tank to a trailer-mounted storage tank. Oil was released onto a concrete pad and soil near the trailer-mounted storage tank. The Trust employed a cleanup contractor to recover the oil that was spilled and clean the concrete pad where the release occurred without notifying DEP of the spill. In lieu of paying a \$18,000 penalty, the Trust will make a \$20,000 donation to a local coalition. The donation will be used to develop and/or implement a Spill Response Plan with protection strategies for the entire Buzzards Bay coastline. ACOP-SE-3E008-SEP.
- DEP executed an agreement with a municipality to address violations related to late notification of a 72-hour notification condition, failure to initiate an IRA and inadequate assessment and required report submittals. Groundwater samples revealed C11-C22 aromatics exceeding RCGW-1 within 500 feet of a water supply well. The municipality has agreed to perform required response actions in a timely manner and document all activities in the proper submittals. In addition, the municipality has agreed to pay a \$500 penalty. ACOP-WE-04-30A14.
- DEP executed an agreement with a petroleum transportation company for failing to immediately notify DEP of a release that occurred while gasoline was being delivered to a service station. Gasoline was released to pavement and a storm drain. The company has agreed to complete response actions and to a \$9,375 penalty for the late notification. In addition, the company has agreed to submit revised emergency response procedures and provide refresher training to employees on response to petroleum spills and other types of emergencies. DEP has agreed to suspend a portion of the penalty pending compliance with the terms of the agreement. ACOP-WE-04-3005

Enforcement from Audits

- As a result of a random audit of a Class A-3 Response Action Outcome (RAO), DEP found GW-2 exceedances and imminent hazard levels of chlorinated solvents in indoor air at three residences where four families lived. DEP deemed the RAO not to be valid, evacuated the residences and conducted Immediate Response Actions (IRAs) to abate the imminent hazard condition. An agreement

was executed with the developers/former owners of the properties whereby the responsible parties, who have since re-taken ownership of the properties, agreed to fully refund the costs incurred by DEP performing the IRA, agreed to perform additional response actions until a level of No Significant Risk is achieved and a valid RAO is submitted, and agreed to stipulated penalties for violations of the agreement. (The LSP Board is evaluating this case in connection with an ongoing disciplinary action against the LSP-of-Record). ACO-SE-3A-004.

- DEP executed an agreement with the owner of a commercial property for failing to correct a Notice of Activity and Use Limitation (AUL) following a DEP audit. As part of the agreement, the owner will comply with the required response actions and will conduct a Supplemental Environmental Project having a value of \$2,800 to secure environmental and/or public health protection/improvements. Pending compliance with the conditions of the agreement, DEP has suspended the remaining \$2,450 penalty. ACOP-SE-04-3A-003-SEP.
- As a result of failing to correct violations encountered during a DEP audit, DEP has executed an agreement with a manufacturer. The company was assessed a \$30,000 penalty after the company failed to fully evaluate active technologies to cleanup a localized "hot spot" of benzene in groundwater. At the conclusion of the audit, DEP identified several active technologies that the company could have used in order to cleanup groundwater but had not been considered. In response to audit findings and Notice of Noncompliance (NON), the company submitted a revised evaluation plan to DEP that again selected passive monitoring of the site and did not include the active cleanup technologies identified by the Department. In response to the enforcement action, the Company has conducted a vacuum extraction pilot test and committed to active recovery to achieve remedial goals ACOP-CE-04-3001.
- DEP has executed an agreement with a corporation for failing to meet MCP performance standards while remediating a 21E site. As a result of an audit, DEP issued a Notice of Noncompliance (NON) to the corporation requiring additional sampling of lead-contaminated soil for hot spot delineation and evaluation of cleanup options. The company performed the sampling and submitted a plan to excavate and dispose of the contaminated soils. The corporation subsequently decided to implement an alternative cleanup action and failed to provide a revised plan to the DEP as required by the NON. As part of the agreement, the corporation will comply with required response actions and has agreed to pay a \$21,250 penalty. A portion of the penalty will be suspended if remedial actions are conducted in compliance with requirements. ACOP-CE-04-3010

Deadline Enforcement

- DEP executed an agreement with a condominium Trust to resolve violations of the MCP and to settle a unilateral penalty previously assessed for the violations. On February 2001, DEP was notified of a release of oil at a residential property.

In April of 2001, the Trust notified DEP, in writing, it was taking responsibility for the release; however, at the first year anniversary, the Trust had failed to file the required response action submittals. DEP issued a NON, but the trust still failed to comply. DEP issued a \$7,500 unilateral penalty which the Trust appealed. Through this agreement, the Trust has agreed to resolve the noncompliance, perform the required response actions according with MCP timelines and to pay the \$7,500 penalty. ACOP-NE- 04-3A015-SETT.

- DEP issued a unilateral penalty in the amount of \$30,000 to a realty Trust for failure to comply with conditions of an AUL (paving and fencing to prevent contact with surficial contaminated soils), failure to implement an IRA to address a threat of release from an abandoned fuel oil tank, and failure to Tier Classify and perform response actions. Previously, DEP had assessed a \$9,500 penalty and issued a Unilateral Administrative Order (UAO) to perform the required response actions. However, the Trust neither appealed the Order nor paid the penalty. PAN-WE-04-3008.
- DEP issued a unilateral penalty in the amount of \$30,000.00 to a corporation for failure to complete response actions involving the cleanup of fuel oil at their facility. A release of fuel oil, originating from a failure of an underground storage tank resulted in the discharge of fuel oil to a nearby brook in April 1996. Response actions were initiated, including removal of both the tank and removal of contaminated soil; however, response actions have not been completed in accordance with the MCP despite issuance of a previous unilateral penalty and a UAO. The corporation neither complied with the Order nor paid the penalty. PAN-WE-04-3006.
- DEP executed an agreement with the operator of a 21E site that is out of compliance with MCP deadlines. The Order addresses five years of noncompliance, in which required comprehensive response action (Phase II, III, IV and RAO) deadlines have been missed. In addition to agreeing to perform the required response actions, the operator agreed to pay a \$25,000 penalty. ACOP-NE-04-3A016.

The Agency Speaks October through December 2004

by Maria Pinaud, 617/292-5909, Maria.Pinaud@state.ma.us

This column focuses on noteworthy enforcement actions taken by DEP's Bureau of Waste Site Cleanup between October and December 2004. The statements of fact below are DEP allegations and have not necessarily been admitted to by the parties subject to enforcement.

Failure to Notify

- DEP executed an agreement with a realty company for failing to provide timely notification of a release at a property the company acquired. The company possessed environmental assessment reports describing the detection of oil contamination in soil at the property prior to purchasing the property. DEP assessed a \$4,315 penalty for the violation. A portion of the penalty has been suspended pending timely performance of response actions and compliance with the terms of the agreement. ACOP-04-WE-3018

Illegal Discharge

- DEP executed an agreement for a \$6,000 penalty involving a commercial property used as an oil terminal. In August 2004, the company was cited for releasing oil to a pond. An oil/water/soap mixture was initially released to a storm drain on the property, and the oil was then discharged from the storm drain to the pond. In response to this violation, the company agreed to complete the required response actions and proposed to perform a Supplemental Environmental Project ("SEP"). The SEP consists of a donation, in lieu of the penalty, of \$6,000 to an environmental trust fund. The trust fund will finance the removal of contaminated pond sediments and other improvements so that a nearby pond can return to full recreational use. ACOP-WE-04-3017-SEP

Enforcement from Audits

- DEP executed an agreement for a \$100,000 penalty with the owner of a shopping center for Massachusetts Contingency Plan (MCP) violations. The company failed to fully remediate chlorinated solvent contamination in groundwater at the shopping center. In addition, DEP agreed to suspend \$25,000 of the penalty provided all terms of the agreement are met. The owner had failed to conduct response actions even after DEP issued a Notice of Noncompliance in January 2003. The owner had also failed to perform the required Immediate Response Actions (IRAs) to address an Imminent Hazard impacting neighboring commercial and residential properties. The Imminent Hazard has since been

abated as a result of actions required by DEP enforcement. The agreement establishes deadlines for completion of response actions. ACOP-NE-04-3A026

- DEP executed an agreement for a \$4,000 penalty with the owner of an industrial property for failing to employ a Licensed Site Professional (LSP) and for performing response actions at the site without proper LSP oversight. In addition to paying the penalty, the company has completed the necessary response actions substantially in advance of established regulatory deadlines and with the oversight of an LSP. ACOP-CE-04-3026

Deadline Enforcement

- DEP's Commissioner issued a Final Decision regarding a realty trust. The decision approves a settlement agreement requiring payment of a \$7,000 penalty, and resolves noncompliance with the MCP. In 2002, the realty trust failed to submit either a Tier Classification or Response Action Outcome (RAO) Statement regarding the cleanup of this site, where heavy metals were found in surficial soil. DEP then issued a Notice of Noncompliance to the Trust, which failed to respond. After that, DEP assessed an \$8,500 penalty, which was appealed. The Trust argued that the LSP hired to conduct the cleanup had told them an RAO had already been submitted. Since that time, an RAO prepared by a different LSP has been submitted for the site.
- DEP executed an agreement with a major gasoline retailer who has agreed to pay a \$5,325 penalty to the Commonwealth for failing to complete the cleanup of gasoline contamination, and for conducting remedial work without a permit, at one of its gasoline service stations. The company was originally required to complete the cleanup and submit a statement by April 4, 2002, documenting that this work was completed. The company did not complete the cleanup, but instead submitted an application for a permit extension to continue work at the site. DEP issued that permit extension on the condition that the cleanup be completed by the new expiration date of April 4, 2004. However, the company did not meet the new deadline for cleanup of the site, and did not request an extension to the permit, though it continued to conduct cleanup actions at the site. In addition to paying the penalty the company has agreed to a schedule for completing response actions. ACOP-CE-04-3017
- DEP executed an agreement with a \$137,500 penalty with the owner of a commercial property for failure to complete the required assessment and cleanup of contaminated soil and groundwater. Previously, a NON was issued by DEP and the owner failed to return to compliance in response to the NON. Of the \$137,500 penalty, \$69,000 is to be paid immediately and the remaining \$68,500 is suspended contingent upon completion of the work as scheduled in the ACOP. The contamination is located in the Zone II recharge area of a municipal drinking water supply well, near private drinking water supply wells and wetlands, and within an endangered species habitat. ACOP-CE-04-3027

Stipulated Penalties

- DEP's Commissioner issued a Final Decision that dismisses the appeal of a \$12,000 Civil Administrative Penalty concerning the owner of a gasoline-contaminated auto repair facility site which is located within the Zone II of a public water supply. DEP issued the \$12,000 Stipulated Penalty Demand after the site owner failed to comply with a site assessment deadline established earlier under a Consent Order. The site owner is currently conducting the required actions, and must now either pay the Penalty or appeal the Commissioner's decision to Superior Court.

LSP Enforcement

- DEP entered into a Consent Order with a \$15,000 Penalty with a Licensed Site Professional (LSP) and the LSP's employer for violations of the MCP. The penalty is divided evenly between the LSP and the consulting firm that employed the LSP during the noncompliance. The violations occurred at two sites involving automobile service garages during the spring and summer of 2003. In both instances, the LSP and consulting firm knowingly performed remedial actions without required notice to DEP and, in one case, without required approvals.
ACOP-NE-04-3A018

Helpful Compliance Hint

DEP has encountered several instances where it appears that an IRA may not have been completed, and thus the site would be in violation of the MCP. Please remember to submit an IRA Completion Statement (BWSC105) using the Release Trucking Number (RTN) assigned to the IRA condition. An IRA Completion Statement is required, even if you linked the RTN to the RTN of a Tier Classified site with ongoing comprehensive response actions. Otherwise, DEP will assume that the IRA is ongoing and would expect to receive periodic status reports associated with the IRA RTN. DEP is selectively targeting for enforcement, sites in noncompliance with IRA requirements.